

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**PRECISION CPAP, INC., *et al.*,**

**Plaintiffs,**

**v.**

**JACKSON HOSPITAL, *et al.*,**

**Defendants.**

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**Case Number: 2:05-CV-1096-MHT-DRB**

**NOTICE OF RESOLUTION AND REQUEST FOR MODIFICATION OF SUBPOENA**

**COME NOW** Lincare Inc., American Home Patient, Inc. and Baptist Ventures-American Home Patient, by and through counsel, and give notice of the resolution of disputes related to, and request modification of, the Rule 45 Subpoena Duces Tecum to Lincare Inc. and as grounds therefor, state as follows:

1. The above parties have reached an agreement with regard to the disclosures expected of Lincare Inc. and request the subpoena be modified as set forth herein.
2. Lincare Inc. will respond to Request No. 1 by giving its name and any trade names used in the Montgomery/Prattville area since 2000.
3. Lincare Inc. will respond to Request No. 2 by giving the number of referrals by each of the Jackson/Baptist Hospital defendants and the total number of referrals per year for the Montgomery/Prattville area for the requested years (the referrals given may not necessarily be the same as the number of patients or clients of Lincare as some patient/clients may have two or more referrals, i.e., one patient may have a referral for oxygen and a bed-this would be reported as 2 referrals).

4. Lincare Inc. will respond to Request No. 3 by giving a lump sum of the total revenues per year received from the Montgomery/Prattville area for the requested years.

5. Lincare Inc. will respond to Request No. 4 by giving a lump sum separately for each hospital defendant of the total revenues per year from referrals from each of the Jackson/Baptist Hospital defendants for the requested years.

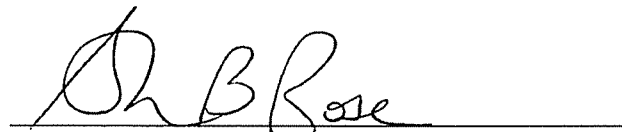
6. The above items will be disclosed as "Confidential-Counsel Only" on or before September 15, 2006, provided the Protective Order is entered by then. If the Protective Order is not entered by then, the production will take place immediately following the entering in of the Protective Order.

7. Based on the foregoing, the telephone conference scheduled for the 25th day of August, 2006 at 10:30 a.m. is no longer necessary and may be cancelled.

**WHEREFORE, PREMISES CONSIDERED**, Lincare Inc., American Home Patient, Inc. and Baptist Ventures-American Home Patient move that the subpoena be modified as set forth herein and for such other and further relief as is just.

Respectfully submitted,

HARWELL, HOWARD, HYNE, GABBERT &  
MANNER, PC

A handwritten signature in dark ink, appearing to read "Glenn B. Rose", is written over a horizontal line.

Glenn B. Rose, Esquire {TN Bar 010598}  
Counsel for American Home Patient, Inc. and  
Baptist Ventures-American Home Patient

OF COUNSEL:

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RITCHEY & RITCHEY, P.A.

Gregory S. Ritchey, Esquire {ASB-8193-H68G}  
Richard S. Walker, Esquire {ASB-8719-L70R}  
Counsel for Lincare Inc.

OF COUNSEL:

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Phone: 205.271.3100

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**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a copy of the foregoing has been served upon the following:

Mike Carlson, Esquire  
William Carlson & Associates, P.C.  
Post Office Box 660955  
Birmingham, AL 35266

James E. Williams, Esquire  
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Brian M. Clark, Esquire  
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Birmingham, AL 35203

Dennis R. Bailey, Esquire  
Rushton, Stakely, Johnson & Garrett, P.A.  
184 Commerce Street  
Montgomery, AL 36104

by placing a copy of same in the United States Mail, postage prepaid, on this the 24<sup>th</sup> day of August, 2006.

  
OF COUNSEL